

forms. In a typical creditors' reorganization there may be a transfer of the property of the old corporation to its bondholders, or the bondholders' committee, upon surrender of the bonds, followed by the transfer of such property to the new corporation in consideration of stock in the latter; or there may be a transfer of the bonds to the new corporation in exchange for its stocks or securities, followed by the transfer of the property of the old corporation in consideration of the surrender of its bonds. In either event, section 371(b) treats the result to the participating security holders as an exchange of the securities of the old corporation for securities of the new corporation. In order, however, to qualify as an exchange under section 371(b) the various events resulting in the relinquishment or extinguishment of the old securities and the acquisition of the new securities must be embraced within the plan of reorganization and must be undertaken for reasons germane to the plan. If the event, or series of events, qualifies as an exchange under section 371(b), no antecedent event necessarily a component of the relinquishment or extinguishment of the securities of the old corporation in consideration of the acquisition of the securities of the new corporation shall be considered a transaction or event having consequences for income tax purposes.

(b) *Exchange solely for stock or securities.* Section 371(b)(1) provides that no gain or loss shall be recognized upon an exchange consisting of the relinquishment or extinguishment of stock or securities in an insolvent corporation described in section 371(a), in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate the plan of reorganization. As used in this section, the term security does not include a short-term note.

(c) *Exchanges for stock or securities and other property or money.* If an exchange would be within section 371(b)(1) if it were not for the fact that the property received in the exchange consists not only of stock or securities in the corporation organized or made use of to effectuate the plan of reorganization,

but also of other property or money, then

(1) As provided in section 371(b)(2), the gain, if any, to the taxpayer will be recognized in an amount not in excess of the sum of money and the fair market value of the other property. The gain so recognized shall be treated as capital gain.

(2) The loss, if any, to the taxpayer from such an exchange is not to be recognized to any extent (see section 371(c)).

(d) *Records to be kept and information to be filed.* (1) Every taxpayer who receives stock or securities and other property or money upon an exchange described in section 371(b) in connection with a corporate reorganization, must furnish a complete statement of all facts pertinent to the recognition or nonrecognition of gain or loss upon such exchange, including—

(i) A statement of the cost or other basis of the stock or securities transferred in the exchange, and

(ii) A statement in full of the amount of stock or securities and other property or money received from the exchange, including any liability assumed upon the exchange. The amount of each kind of stock or securities and other property (other than liabilities assumed upon the exchange) received shall be set forth upon the basis of the fair market value thereof at the date of the exchange. The statement shall be incorporated in the taxpayer's income tax return for the taxable year in which the exchange occurs.

(2) Permanent records in substantial form shall be kept by every taxpayer who participates in an exchange described in section 371(b), showing the cost or other basis of the transferred property and the amount of stock or securities and other property or money received (including any liabilities assumed upon the exchange), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

§ 1.372-1 Corporations.

(a) If, as the result of a transaction described in section 371, so much of section 371(c) as relates to section 371(a), or the corresponding provisions of prior

law, the property of an insolvent corporation is transferred, in pursuance of a plan of reorganization, to a corporation organized or made use of to effectuate such plan, the basis of such property in the hands of the acquiring corporation is the same as it would be in the hands of the insolvent corporation, increased in the amount of gain recognized upon such transfer under the law applicable to the year in which the transfer was made. In any such case, the adjustments to basis provided by section 270 of the Bankruptcy Act (11 U.S.C. 670), or section 1017 of the Code, shall not be made in respect of any indebtedness cancelled pursuant to the plan of reorganization under which the transfer was made. If the transaction falls within the provisions of section 372(a), the basis of the property involved shall be determined pursuant to such provisions, notwithstanding that the transaction might otherwise fall within another basis provision.

(b) The provisions of section 372(a) are applicable in the determination of basis for all taxable years beginning after December 31, 1933, except that the basis so determined shall not be given effect in the determination of the tax liability for any taxable year beginning prior to January 1, 1943. With the exception indicated, the basis so prescribed is applicable from the date of acquisition of such property. For example, the provisions of section 1016 relating to adjusted basis shall be applied as if section 372(a) were a part of the Internal Revenue Code of 1939 and prior internal revenue laws applicable to all taxable years beginning after December 31, 1933. Hence, in determining the amount of the adjustments for depreciation, depletion, etc., under the provisions of section 1016(a)(2), the *amount allowable* is the amount computed with reference to the basis provided in section 372(a).

(c) The effect of the application of section 372(a) may be illustrated by the following examples:

Example (1). On January 1, 1935, the Y Corporation, a taxpayer making its returns on the calendar year basis, acquired depreciable property from the X Corporation as the result of a transaction described in section 372(a). On January 1, 1935, the property had, in the hands of the X Corporation, a basis of \$200,000, an adjusted basis of \$150,000, a fair

market value as of January 1, 1935 of \$80,000, and an estimated remaining life of 20 years. The 1935 transaction was treated as a taxable exchange and, accordingly, the Y Corporation claimed and was allowed depreciation in the amount of \$4,000 for each of the eight taxable years 1935 through 1942, inclusive. For each of the twelve taxable years 1943 through 1954, inclusive, the Y Corporation claimed and was allowed depreciation in the amount of \$7,500. On December 31, 1954, the property was sold for \$10,000 cash. The amount of the gain realized upon the sale is computed as follows:

Basis to X Corporation	\$200,000
Adjustment for depreciation in the hands of X Corporation (sec. 1016)	50,000
Adjusted basis for depreciation in the hands of both X and Y Corporations (sec. 372(b))	150,000
Deduct:	
Depreciation allowable in amount of \$7,500 per year (1/20 of \$150,000) for 8 years, from Jan. 1, 1935, through Dec. 31, 1942	\$60,000
Depreciation allowable Jan. 1, 1943, to Dec. 31, 1954 (12 years at \$7,500)	90,000
	150,000
Adjusted basis for computing gain or loss	0
Sale price	10,000
Gain realized	10,000

For the taxable year 1943 and succeeding taxable years, the Y Corporation is entitled to deductions for depreciation in respect of such property in the amounts of \$7,500 in the determination of its tax liabilities for such years. But no change in the tax liability is authorized for preceding taxable years by reason of the difference between the \$7,500 depreciation allowable and the \$4,000 deduction previously allowed.

Example (2). Assume the same facts as in *Example (1)*, except that the property acquired by the Y Corporation had a fair market value as of January 1, 1935, of \$180,000, instead of \$80,000, and the Y Corporation claimed and was allowed depreciation in the amount of \$9,000 for each of the eight taxable years 1935 to 1942, inclusive, and in the amount of \$6,500 for the taxable years 1943 to 1954, inclusive. In such case, the amount of the gain realized upon the sale of the property would be computed as follows:

Adjusted basis for depreciation in the hands of Y Corporation as computed in <i>Example (1)</i> ..	\$150,000
Deduct:	
Depreciation allowed in the amount of \$9,000 per year for 8 years Jan. 1, 1935 to Dec. 31, 1942	\$72,000
Depreciation allowable Jan. 1, 1943, to Dec. 31, 1954, inclusive (12 times \$6,500)	78,000

Internal Revenue Service, Treasury

§ 1.374-1

Adjusted basis for computing gain or loss	150,000
Sale price	0
	\$10,000
Gain realized	10,000

No change in the tax liability is authorized for taxable years preceding 1943 by reason of the difference between the \$7,500 depreciation allowable and the \$9,000 deduction previously allowed.

§ 1.374-1 Exchanges by insolvent railroad corporations.

(a) *Exchange solely for stock or securities.* (1) Section 374(a)(1) provides for the nonrecognition of gain or loss by an insolvent railroad corporation upon certain exchanges made in connection with the reorganization of the corporation. In order to qualify as a section 374(a) reorganization, the transaction must satisfy the express statutory requirements as well as the underlying assumptions and purposes for which the exchange is excepted from the general rule requiring the recognition of gain or loss upon the exchange of property.

(2) Section 374(a)(1) applies only with respect to a reorganization effected in one of two specified types of court proceedings: (i) Receivership proceedings, or (ii) proceedings under section 77 of the Bankruptcy Act (11 U.S.C. 205). The specific statutory requirements are the transfer after July 31, 1955, of property of a railroad corporation, as defined in section 77(m) of the Bankruptcy Act (11 U.S.C. 205(m)), in pursuance of an order of the court having jurisdiction of the corporation in such proceeding, to another railroad corporation, as defined in section 77(m) of the Bankruptcy Act, organized or made use of to effectuate a plan of reorganization approved by the court in such proceeding, in exchange solely for stock or securities in such other railroad corporation. If the consideration for the transfer consists of other property or money as well as stock and securities, see section 374(a)(2) and (3) and paragraph (b) of this section. As to the assumption of liabilities in an exchange described in section 374(a), see section 357 and paragraph (a)(1) and (2) of § 1.357-1 and paragraph (a) of § 1.357-2.

(3) The application of section 374(a)(1) is to be strictly limited to a transaction of the character set forth in

such section. Hence, the section is inapplicable unless there is a bona fide plan of reorganization approved by the court having jurisdiction of the proceeding and the transfer of the property of the insolvent railroad corporation is made pursuant to such plan. It is unnecessary that the transfer be a direct transfer from the insolvent railroad corporation; it is sufficient if the transfer is an integral step in the consummation of the reorganization plan approved by the court. By its terms, the section has no application to a reorganization consummated by adjustment of the capital or debt structure of the insolvent railroad corporation without the transfer of its assets to another railroad corporation.

(4) As used in section 374(a)(1), the term *reorganization* is not controlled by the definition of *reorganization* contained in section 368. However, certain basic requirements, implicit in the statute, which are essential to a reorganization under section 368, are likewise essential to qualify a transaction as a reorganization under section 374(a)(1). Among these requirements are a continuity of the business enterprise under the modified corporate form and a continuity of interest therein on the part of those persons who were the owners of the enterprise prior to the reorganization. Thus, the nonrecognition accorded by section 374(a)(1) applies only to a genuine reorganization as distinguished from a liquidation and sale of property to either new or old interests supplying new capital and discharging the obligations of the old railroad corporation. For the purpose of determining whether the requisite continuity of interest exists, the interest of creditors who have, by appropriate legal steps, obtained effective command of the property of an insolvent railroad corporation is considered as the equivalent of a proprietary interest. But the mere possibility of a proprietary interest is not its equivalent. In general, any transaction will be subject to nonrecognition of gain or loss as prescribed by section 374(a)(1) where the property is transferred to a railroad corporation and the stock and securities of such corporation are transferred to persons who were shareholders or creditors of the transferor